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IN THE

Supreme Court of the United States

CHARLES GUSICK, *Petitioner,*

vs.

ARIZONA, *Respondent.*

No. 681

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

CHARLES GUSICK, *Petitioner,*		
vs.		No.....
ARIZONA, *Respondent.*		

Comes now the respondent, The State of Arizona, ex rel. Robert Morrison, The Attorney General of The State of Arizona, in opposition to the application for Writ of Certiorari made herein.

State of Arizona, Respondent,
by ROBERT MORRISON,
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STATEMENT OF THE CASE

1. A petition for a writ of habeas corpus was initiated in the Superior Court of Pinal County, Arizona, on behalf of Charles Gusick, an inmate of the Arizona State Prison.

2. Without affording a hearing to the State of Arizona and without consideration of the sufficiency of the petition, the Pinal County Court summarily issued a writ of habeas corpus.

3. During the pendency of a later hearing scheduled by the lower court for a *return* of the writ, the Attorney General of the State of Arizona petitioned the Supreme Court of the State of Arizona for a writ of certiorari, giving notice of application.

4. Petition for the writ, briefs, and arguments in support of the writ were filed and served upon the lower court and upon the attorneys for the petitioner, Gusick.

5. Due notice, hearing, appearance, and all other incidents of due process were afforded Gusick's attorneys by the Supreme Court of the State of Arizona.

6. Attorneys for Gusick filed briefs, made their appearance and oral arguments in opposition to the petition for a writ of certiorari.

7. Certiorari was issued by the Supreme Court of the State of Arizona, commanding dismissal of the petition for writ of habeas corpus initiated in the lower court.

PROPOSITIONS OF LAW

I. Petitioner Gusick, was afforded notice, hearing, representation by counsel, and all things commensurate with due process by the State of Arizona.

II. Jurisdiction of the Arizona Supreme Court was invoked for the purpose of decision on a point of Arizona State law.

III. The Jurisdiction of the Arizona Supreme Court is founded both upon its constitutional and its inherent power of superintendency over the inferior courts of the State of Arizona.

ARGUMENT

I

Respondent contends that the petitioner, Charles Gusick, was accorded notice and hearing and all things commensurate with due process in the Supreme Court of Arizona. A review of the transcript of the record in this court clearly shows the truth of the assertion above.

II

Contrary to the assertion of the petitioner herein, there is no dispute, and no real issue was framed on a question of fact. It may be assumed, to obviate argument on facts, that the petitioner Gusick served the first portion of his sentence on the first of twenty counts to which he pleaded guilty. The remaining question, solely one of law, is whether or not, under the Arizona law, the Arizona Court having original jurisdiction of the person of the convict loses such jurisdiction by reason of the status of the record in that court.

It is submitted that the United States Supreme Court will not ordinarily issue its writ of certiorari to review decisions or judgments based solely on questions of fact. *Houston Oil Co. v. Goodrich,* 245 U. S. 440, 38 S. Ct. 140 (1918).

The power to issue the writ as exercised by the Supreme Court of the United States is to be exercised sparingly and only in cases of gravity and importance. *Forsythe v. City of Hammond,* 166 U. S. 506, 17 S. Ct. 665 (1897).

It is also respectfully submitted that the United States Supreme Court is without the jurisdiction to review the holdings of a supreme court of a state on a question of purely state law. *Neblett v. Carpenter,* 305 U. S. 297, 59 S. Ct. 170 (1938).

The power of the Supreme Court of the United States to undo convictions in the state courts is limited to the enforcement of fundamental principles secured by the Fourteenth Amendment. See *McNabb v. United States,* 318 U. S. 332, 340 63 S. Ct. 608 (1952).

By the citation of the foregoing authorities, it is contended that the issues giving rise to the petition herein are solely problems of the Arizona law, and as such, decided by the Arizona Supreme Court. *Texarkana v. Arkansas-Louisiana Gas Co.* 306 U. S. 188, 59 S. Ct. 448 (1939); *State Tax Commission of Iowa,* 322 U. S. 335, 64 S. Ct. 1028 (1944).

III

The Supreme Court of Arizona is, by constitutional provision, the highest court of the State of Arizona and invested with express power to issue writs of certiorari. It also, by the same provision of the constitution, is invested with all necessary and proper powers for the complete exercise of its appellate and its revisory jurisdiction. *Arizona Constitution,* Article 6, Section 2, 51 *L.R.A.* 33 at 37. Anno.

Thus, in support of the respondent's third proposition of law, it is respectfully argued that the Arizona Supreme Court, in granting the original writ of certiorari, was in the proper exercise of its appellate powers and in the proper exercise of its powers of general superintendency:

> The constitutional grant of superintending control over inferior courts vests in the supreme court an independent jurisdiction enabling it to restrain the excesses and quicken the neglects of inferior courts in the absence of other adequate remedy, and authorizes the issue of all the ancient writs necessary to the exercise of that high power, including mandamus, prohibition, certiorari and procedendo. *State of Wisconsin ex rel, 4th National Bank of Philadelphia et al, v. D. H. Johnson, et al,* 103 Wisc. 591 (1899).

> Generally speaking the inherent power of general "superintendency" has its seat in the highest law court of original jurisdiction . . . *Alabama Constitution,* Article 6, Section 2, 51 *L.R.A.* 33 at 37. Anno.

It is also contended by the respondents that the Arizona Supreme Court, in its hearing on the original petition for certiorari, was entitled to secure not only all of the records of the Pinal Court Court in which the habeas corpus petition was initiated; but also the records of the court of original jurisdiction, namely: the Maricopa County Superior Court. One reason for the assertion of this power is that the Arizona court has the inherent power to compel the sending to the Arizona Supreme Court of the records of proceedings in a trial court which are necessary for the information of the Supreme Court upon the question of the issuance of a writ. *State of Wisconsin ex rel, 4th National Bank of Philadelphia v. D. H. Johnson,* et al, supra, and further, for the reason that the petitioner in habeas corpus founded his petition upon the state of the record of the Maricopa County Court.

On the same proposition of law, the Arizona Supreme Court's power to issue certiorari is similar to

that of the United States Supreme Court's power, in that it is not, as a rule, affected by the stage or the condition of the case in the lower court. *The Three Friends,* 166 U. S. 1, 17 S. Ct. 495 (1897); *Commercial Life Insurance Co. v. Wright,* 64 Ariz. 129, 166 P.2d 943 (1945); Ariz. Code 1939, 28:101.

It was the insistence of the Arizona Supreme Court that the record of the criminal trial of the Maricopa County Court was not open to a collateral attack in a habeas corpus proceeding to secure the release of a convict, but that the record in that lower court imports absolute verity. *Riddle v. Dyche,* 262 U. S. 333, 43 S. Ct. 555 (1923); *In Re Mooney,* 72 F.2d 503 (Ninth Cir. 1934); *Klopp v. Overlade,* 66 F. Supp. 450, 453, (S.D. Ind. 1946). The Arizona Supreme Court as well as the United States Supreme Court must disregard technical errors, defects, or exceptions which do not affect the substantial rights of parties, and in this way prevent matters concerned with mere formalities and minutiae of procedure from touching the merits of the verdict. *Bruno v. United States,* 308 U. S. 287, 60 S. Ct. 198 (1939).

CONCLUSION

Certiorari lies to review a proceeding based upon a petition for writ of habeas corpus which is insufficient to give the hearing court jurisdiction.

A petition for writ of habeas corpus must show prima facie a case of unlawful imprisonment; and, in cases in which the hearing court plainly and clearly has no jurisdiction under the facts exhibited to it as a basis for issuing such writ, it not only is the right, but it is the duty of the Arizona Supreme Court to issue its writ of certiorari and its subsequent order dismissing a petition which fails to confer the jurisdiction. *State of Arizona v. Superior Court,* 26 Ariz. 584, 229 Pac. 96 (1924); *State of Arizona v. Superior Court,* 25 Ariz. 226, 215 Pac. 538 (1923); *State of Arizona v. Superior Court,* 22 Ariz. 452, 197 Pac. 537 (1921).

Certiorari should be denied the petitioner by the Supreme Court of the United States.

Respectfully submitted,

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Attorney General of Arizona

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Special Assistant
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Attorneys for Respondent